

Remarks

I. Status of Claims

Claims 1-186 are pending in this application. Claims 10-12, 20-28, and 60-186 have been withdrawn from consideration by the Examiner.

II. Rejection under 35 U.S.C. § 103

Claims 1-9, 13-19, and 29-59 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,235,298 ("*Naser*") in view of U.S. Patent No. 5,688,930 ("*Bertho*"). *Office Action* at pp. 2-3. Applicants respectfully traverse this rejection.

Two of the basic criteria an Examiner must demonstrate in order to establish a prima facie case of obviousness are (1) that there is some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings, and (2) that there is a reasonable expectation of success in making the proposed modification. See M.P.E.P. § 2143. Applicants respectfully submit that neither of these two criteria has been satisfied.

Naser's compositions comprise a water-in-oil-in-water (W_1 -O- W_2) multiple emulsion. *Naser* at col. 2, lines 15-16. W_1 is an internal aqueous phase comprising a solute and an optional surfactant, and O is the oil phase comprising an oil and a low HLB emulsifier. *Id.* at col. 2, lines 18-22. W_2 is the external aqueous isotropic phase surrounding W_1 -O. *Id.* at col. 2, lines 23-24. W_2 comprises a cleansing surfactant and a stabilizing natural gum polymer. *Id.* at col. 2, lines 24-30.

Naser sets forth very specific requirements for its compositions, as detailed below:

- the composition "allows delivery of desirable benefit agent(s) while simultaneously maintaining both the integrity of the multiple emulsion droplets and physical stability of the composition (i.e. the bottom clear layer formed due to phase separation should be less than 20 volume percent of the total volume of the sample for a period of at least 45 days at room temperature.)" (*Id.* at col. 2, lines 4-10);
- it is a "criticality" that the natural gum stabilizer and surfactant form a gel (*Id.* at col. 2, lines 30-31);
- it is another "criticality" that surfactant phase W₂ does not contain an anionic surfactant with an amido group (*Id.* at col. 2, lines 32-34);
- W₂ must be isotropic (*Id.* at col. 2, lines 34-35);
- where W₂ comprises entirely of or a majority of an anionic surfactant, then the gum polymer should be nonionic (*Id.* at col. 4, lines 10-14); and
- where W₂ comprises entirely of or a majority of an amphoteric surfactant, then an anionic gum polymer should be used (*Id.* at col. 4, lines 14-17).

Bertho describes the use of mixtures of alkyl pentosides as non-ionic surface active agents. *Bertho* at col. 6, lines 14-15.

The Examiner asserts that the combination of Naser and Bertho "do not require the replacement of polysaccharide gum of Naser with the alkyl pentosides of Bertho and instead teaches addition of alkyl pentosides of Bertho to the composition (containing the amphoteric surfactant) of [Naser]." *Office Action* at p. 3.

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Applicants respectfully disagree. When discussing W₂, Naser explicitly states that the "composition contains all non-amido anionic or all amphoteric surfactant, or combinations of the two." *Naser* at col. 15, lines 32-34. From this passage, it is clear that Naser does not teach the use of non-ionic surfactants in W₂. Moreover, Naser requires that if "W₂ comprises entirely of or a majority of an amphoteric surfactant, then an anionic gum polymer should be used." *Id.* at col. 4, lines 14-17. Even if the non-ionic alkyl pentosides of Bertho can be classified as a non-ionic gum polymer, for which Applicants argue there is no support, Naser clearly restricts the combination of amphoteric surfactants to a combination with anionic gum polymers. It is irrelevant that Bertho teaches that alkyl pentosides can contain anionic, cationic or non-ionic surfactants because Naser does not give such a broad teaching. Naser does not suggest the combination of amphoteric surfactants with non-ionic gum polymers.

As stated above, Naser provides very strict requirements for the compositions. Some of these requirements are even characterized as a "criticality." Thus, any modification of Naser's compositions must comply with these requirements, or else the modification would improperly render Naser's compositions "unsatisfactory for [their] intended purpose." M.P.E.P. § 2143.01.

Finally, Applicants respectfully submit that the references do not provide a reasonable expectation of success that adding the alkyl pentosides of Bertho to Naser's compositions would satisfy the rigid requirements set forth by Naser. Bertho merely provides a broad suggestion that anionic, cationic or non-ionic surfactants can be combined with the alkyl pentoside mixture without teaching the properties resulting from the combination.

Accordingly, there is no motivation to combine the references and no expectation of success. For at least the foregoing reasons, Applicants respectfully request the withdrawal of this rejection.

III. **Conclusion**

In view of the foregoing remarks, Applicants respectfully request the reconsideration and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge the extension of time fee of \$110 to our deposit account 06-0916.

Respectfully submitted,

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